

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMERICA BANK,)	
)	
<i>Plaintiff,</i>)	Case No: 20-cv-13280
v.)	
)	HON:
CITIZENS BANK,)	
NATIONAL ASSOCIATION,)	MAG Judge:
)	
<i>Defendant.</i>)	

COMPLAINT

Comerica Bank makes the following complaint:

JURISDICTION – PARTIES – VENUE

1. This is an action for money damages in excess of \$75,000.00 regarding an altered check transaction. Defendant Citizens Bank, National Association (“Citizen Bank”) accepted an altered check for deposit and, in violation of its warranties, presented it to plaintiff Comerica Bank (“Comerica”) for payment. The face amount of the subject check is \$155,866.66.
2. The federal courts have subject matter jurisdiction over this action under 28 U.S.C. 1332. The amount in controversy exceeds \$75,000.00 (exclusive of interest, costs, and attorney fees) and complete diversity of citizenship exists between the parties:
 - a. Comerica is a Texas banking association organized under Texas law with its principal place of business in Dallas, Texas.
 - b. Citizens Bank is a national banking association organized under the laws of the United States. It is a citizen of Rhode Island for purposes of determining diversity jurisdiction because it maintains its home office in Providence, Rhode Island. 28 U.S.C. 1348.
3. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred here. 28 U.S.C. §1391.

STATEMENT OF CLAIM

4. Comerica conducts banking operations in Michigan including, without limitation, at its Livonia Operations Center where the bank processes checks drawn on Comerica accounts, including the subject check transaction.
5. Tribar Manufacturing LLC, a Comerica customer in Howell, Michigan, maintained a checking account identified by numbers xxx0298 at all times relevant to this action (the “Comerica Account”).
6. On November 16, 2017, Tribar Manufacturing LLC drew on the Comerica Account by issuing check # 91027 payable to “Standard Tool & Mold Inc” for \$155,866.66 (“original check”).
7. The original check was issued by the drawer with an authorized signature of drawer Tribar Manufacturing LLC.
8. After Tribar Manufacturing LLC issued the original check, someone, under circumstances presently unknown to Comerica, without authorization materially and fraudulently altered the original check by changing payee “Standard Tool & Mold Inc” (with an address in Windsor Ontario, Canada) to payee “EURUS CONSULTING” (with an address in Providence, Rhode Island) (Exhibit-1 is an accurate image of the altered check) (redactions are by counsel) (the “Altered Check” or “draft”).

9. On information and belief, the Altered Check bears the original, genuine and authentic signature of an authorized signer of Tribar Manufacturing LLC.
10. The Altered Check is derived from the original check that was issued with an authorized signature of drawer/customer Tribar Manufacturing LLC.
11. Original check payee “Standard Tool & Mold Inc” did not indorse the original check.
12. Citizens Bank accepted the Altered Check for deposit and collection from someone other than original payee Standard Tool & Mold Inc and credited the account of that unknown person for the amount of the Altered Check.
13. The person from whom Citizens Bank accepted the Altered Check was not entitled to enforce it. On information and belief, Standard Tool & Mold Inc did not hold any interest in the Citizens Bank account into which the Altered Check had been deposited for collection; nor did Standard Tool & Mold Inc transfer any rights in the draft to the registered owner of that account.
14. Comerica and Citizens Bank are both full members of the Electronic Check Clearing House Organization (“ECCHO”).
15. In accordance with their ECCHO membership, Citizens Bank was entitled to transfer and present checks to Comerica by electronically transmitting an image of the item rather than presenting the original, physical item itself.

16. On December 14, 2017, Citizens Bank presented the Altered Check to Comerica by electronically transmitting, through a private electronic clearing house service called SVPCo, an image of the draft along with an electronic presentment notice to Comerica's Livonia, Michigan Operations Center where the transaction was processed.
17. As a matter of law with respect to the Altered Check transaction, Citizens Bank warranted to Comerica that the draft was not altered and that Citizens Bank was entitled to enforce the draft and collect \$155,866.66 from Comerica.
18. On December 14, 2017, Citizens Bank presented Altered Check to Comerica for payment.
19. Upon presentment by Citizens Bank, on December 14, 2017 Comerica paid \$155,866.66 to Citizens Bank in good faith and debited a corresponding amount from the Comerica Account.
20. Citizens Bank's presentment of the Altered Check by means of electronic transmission is governed by the clearing house rules of SVPCo (which incorporate ECCHO rules) and by the applicable provisions of the UCC.
21. Citizens Bank's presentment of the Altered Check to Comerica constituted Citizens Bank's warranty that: it was either entitled to enforce the draft or was authorized to obtain payment or acceptance of the draft on behalf of a person

entitled to enforce it; and, that the original check had not been altered. UCC 3.417(a), 4.208(a).

22. Citizens Bank breach its presentment warranty to Comerica because Citizens Bank was neither entitled to enforce the Altered Check nor authorized to collect on behalf of a person entitled to the enforce the Altered Check.
23. Citizens Bank breached its presentment warranty to Comerica because Citizens Bank presented and received payment on the draft even though the original payee had been fraudulently altered from “Standard Tool & Mold Inc” to “EURUS CONSULTING.”
24. Altered payee “EURUS CONSULTING” or someone in concert with that altered payee wrongfully received the proceeds of the Altered Check transaction.
25. On information and belief, neither original payee “Standard Tool & Mold Inc” nor issuer Tribar Manufacturing LLC received any benefit from the Altered Check transaction.
26. Citizens Bank damaged Comerica.
27. Comerica is entitled to money damages and indemnification from Citizens Bank regarding the Altered Check transaction, which damages consist of the face amount of the draft (\$155,866.66) plus compensation for expenses, attorney fees, costs, and interest.

REQUEST FOR RELIEF

WHEREFORE, plaintiff Comerica Bank requests the following relief against defendant Citizen Bank, National Association:

- A. A money judgment against Citizens Bank, National Association, in the amount of \$155,866.66, plus compensation for expenses, attorney fees, costs, interest, and whatever additional amounts may be allowed by law or contract; and,
- B. Such other and further relief against Citizens Bank, National Association as this Court deems appropriate.

Date: December 12, 2020

/s/ David Wells

Stancato Tragge Wells PLLC
For Plaintiff, Comerica Bank
Two Towne Square - Suite 825
Southfield, MI 48076
(248) 731-4500
dwells@stwlawfirm.com
P47588

EXHIBIT-1

TRIBAR MANUFACTURING LLC GENERAL ACCOUNT 2211 GRAND COMMERCE DR. HOWELL, MI 48855		COMERICA BANK <small>www.comerica.com</small>	91027 <small>9-4/720 148</small>
PAY <input checked="" type="checkbox"/> One Hundred Fifty-Five Thousand Eight Hundred Sixty-Six and 66/100		DATE <input checked="" type="checkbox"/> 11/16/2017	AMOUNT <input checked="" type="checkbox"/> 155,866.66
TO THE ORDER OF <input checked="" type="checkbox"/> EURUS CONSULTING***** 122 9TH STREET WEST PROVIDENCE, RI 02906 USA		AUTHORIZED SIGNATURE <input checked="" type="checkbox"/> <i>[Signature]</i>	
MICR LINE: ⑈091027⑈ ⑆072000096⑆ ⑈0298⑈			

Photo Safe Deposit
Details on Back

WLC

Posted	: 12/14/2017
Bank	: 00000002
R/T	: 7200009
Account	: ⑈0298
Check	: 91027
Amount	: 155866.66
DIN	: 970492931

EXHIBIT-1